2864.

SUPREME COURT OF THE UNITED STATES.

No. 86.

THE STEAMER OREGON—ROGER A. HEIRN, MASTER AND PART OWNER—APPELLANT,

vs.

ROBERT TURNER AND WILLIAM TWIFORD.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

INDEX.

	Original.	Print.
Transcript from district court	1	1
Libel	1	1
Process and return	10	5
Claim and answer	13	6, 7
Restoration bond	20	10
Order for commissions to take testimony	23	11
Release of Tyson	25	12
Deposition of Wm. Twiford	27	13
Do. John Browlin	40	18
Do. Sam'l Augustus	46	21
Do. Joseph Swift	53	24
Objections to Tyson as witness	54	24
Deposition of Tyson	56	24
Opinion of district judge	59	27
Decree of district court	69	30
Appeal to circuit court	70	31
Appeal bond	71	31
Certificate of clerk	73	32
Proceedings in circuit court	74	33
Continuances	74	33
Order transferring to Milledgeville	76	34
Do. Savannah	78	35
Decree affirming judgment	79	35
Appeal bond	80	36
Clerk's certificate	82	37

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Pleas had before the hon. the district court of the United States for the southern district of Alabama, at a term thereof begun and held in and for said district at Mobile, on the second Monday of December, in the year of our Lord one thousand eight hundred and fifty, before his honor John Gayle, judge of said court.

ROBERT TURNER AND WILLIAM TWIFORD
vs.
STEAMER OREGON et al.

Be it remembered, that heretofore, to wit, on the thirty-first day of December, in the year of our Lord one thousand eight hundred and forty-nine, Robert Turner and William Twiford filed in said court their libel against the steamer Oregon, her tackle, apparel, and furniture, &c., in the words and figures following, to wit:

Libel.

UNITED STATES OF AMERICA,
Southern district of Alabama, ss:

To the honorable John Gayle, judge of the district court of the United States within and for the southern district of Alabama.

The libel and complaint of Robert Turner and William Twiford, owners of the schooner William Ozman, whereof the said William Twiford lately was master, her tackle, apparel, and furniture, in and prior to the ninth day of September, 1849, against the steamer Oregon, whereof R. A. Hiern is master, her tackle, apparel, and furniture, and appurtenances, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime. And thereupon the said Robert Turner and William Twiford allege and articulately propound as follows:

First. That on the eighth day of September, 1849, the said schooner, William Osmond, whereof the said William Twiford was then master and part owner, was then in the port of Mobile, at the city of Mobile, loaded with cotton, and destined down the bay of Mobile to the Sardinian ship Maria Teresa, which ship was *being* at anchor at the lower flat in said bay of Mobile. That the said schooner, Wm. Osmond, was at that time a staunch, tight, and well-built vessel, of the burden of about fifty-five tons, and was then completely rigged and sufficiently provided with tackle, apparel, and furniture, and then had on board and in her service a mate and two mariners, besides her master and a negro boy cook, which was a full compliment of hands to navigate said schooner upon the destination aforesaid.

Second. That on the said eighth day of September, 1849, at about one o'clock a. m., the said schooner, Wm. Osmond, loaded and provided and manned as aforesaid, sailed from said city of Mobile on her aforesaid destination down the bay of Mobile, with a northerly wind,

and under her mainsail and jibs, and so continued until she got out of the "pass," when the mainsail-jibs were taken in and she proceeded nearly before the wind under her foresail alone, steering about south until between three and four o'clock on the morning of the same day, when she had reached a point about two miles below Dog river, at which time and place, within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable court, the master and hands of said schooner discovered the said steamer Oregon, whereof the said R. A. Hiern then was, and now is master, about two miles south of said schooner, coming up the bay on her passage from New Orleans, apparently steering about north, and under her usual head of steam. That said steamer was discovered on the larboard bow of the schooner, and that, as soon as she was discovered, the course of the said schooner was changed south by west, so as to pass to the westward of the said steamer, which she would have done had the said steamer kept on her course, but, when about within fifty yards of said steamer, the said steamer changed her course about two points west, and in a direction to cross the bows of the said schooner. That, seeing this position of the said steamer, and that a collision would be inevitable if both vessels kept on their course, the master and hands of said schooner, with loud and audible voice, called to the said steamer to stop and not run into them, and at the same time the helm of the schooner was put hard down to starboard for the purpose of passing to the eastward of said steamer, as the said steamer was then shooting across the course of said schooner, but the foresail of the said schooner, which was out on the starbord side jibbing at the moment the helm was put hard down, prevented the schooner from coming round to the eastward sufficiently to clear said steamer; and notwithstanding the said schooner was plainly visible to the officers and crew of the said steamer, if they had been at the look-out, long before the said steamer changed her course, and there was ample time and room for the said steamer to pass said schooner, and notwithstanding the warning given by the officers and crew of the schooner aforesaid, and she might and could have avoided said schooner, yet the said steamer Oregon kept on her way, without stopping or stowing her engines, or changing her last course, and either intentionally, or most grossly and negligently, under a full head of steam, ran with great force and violence upon the said schooner, the starboard wheelhouse of the steamer striking the bowsprit, and her guard the stern of the said schooner, whereby the bowsprit of said schooner was unshipped and carried away, and the bows of the said schooner opened and stove in, and the said schooner otherwise greatly damaged and disabled, and left in a sinking condition. That the force of the collision turned the head of the said schooner round to the northwest. That the master and hands of said schooner, with loud and audible voices, hailed the said steamer for assistance, but the said steamer wholly disregarded them and continued on, and, notwithstanding the exertions of the said master and mariners in said schooner, the said schooner, soon after the said collision, and in consequence

thereof, sunk, and on striking the bottom fell over on her side, and her deck-load of cotton fell off and floated away, and the said cotton together with said schooner became wholly damaged, wrecked and lost, and the said schooner, her tackle, apparel, and furniture, by reason of said collision and wreck, was abandoned by said master and owners.

Third. That at the time of the collision mentioned in the next preceding article, it was a clear starlight night; the moon was up and shining; there were no clouds, fog, or mist; vessels could be seen at least two miles distant. That said schooner was plainly visible, and could be seen from said steamboat long before the collision, if those in charge of said schooner had kept the proper look-out. That there was ample space and depth of water for said steamer to have passed clear of said *steamer*, and it was her duty to do so. That when the steamer was discovered, the schooner was properly kept away more to the west. The schooner, though before the wind, was on the larboard tack, and bore away as far as her sail would permit. That the schooner was in the proper course, and was skilfully managed by those on board, and it was not in their power to avoid the collision. That the steamer, on the contrary, was improperly managed by those on board of her, and improperly changed her course, and was not managed with care and skilfulness as she should have been managed; that she was in good condition and under the control of steam, and could, after discovering said schooner, have directed her course so as to clear her, and should have done so; and that *and that* said collision was the result of wilfulness, gross negligence, or unskilfulness on the part of the officers and crew of said steamer Oregon; and otherwise the said damage would not have happened.

Fourth. That the said schooner Ozman, before and at the time of receiving the damage from the said steamer Oregon, as hereinbefore stated, was a tight, strong, and staunch vessel, and that these libellants the true and lawful owners of the same, and of her tackle, apparel, and furniture; and the said schooner, her tackle, apparel, and furniture were then of great value, to wit, of the value of two thousand dollars.

Fifth. That immediately after the said collision and damage mentioned in the preceding article, these libellants attempted to raise said schooner, but were unable to do so, and therefore abandoned her, and she was afterwards sold, as she lay a wreck, at public auction in the city of Mobile, and the highest sum bid for her at said sale was one hundred and two dollars and fifty cents, and the tackle, apparel, and furniture sold for one hundred dollars, which, after deducting the advertising and charges, nine dollars and twenty cents, left the sum of one hundred and ninety-three dollars and thirty cents, the entire net proceeds of the sale of said schooner, her tackle, apparel, and furniture, received by these libellants, making the total loss to these libellants the sum of eighteen hundred and six dollars and seventy cents; and that by reason of said schooner having been run foul of by said steamer Oregon as aforesaid, the libellants have sustained damages in the loss of said schooner, her tackle, apparel, and furniture, to the amount of eighteen hundred and six dollars and seventy cents.

Sixth. That all and singular the premises are true, and within the admiralty jurisdiction of this honorable court; in verification whereof, if denied, the libellants crave leave to refer to the depositions and other papers to be by them exhibited in this cause.

Wherefore, the libellants pray that process in due form of law, according to the course of admiralty of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said steamer Oregon, her tackle, apparel, and furniture; and that all persons having or pretending to have right, title, or interest therein, may be cited to appear and answer all and singular the matters so articulately propounded, and that this honorable court would be pleased to pronounce for the damages aforesaid, and to decree such other relief to the libellants as shall to law and justice appertain; also, to condemn the said steamer Oregon, her tackle, apparel, and furniture, and persons intervening for their interest therein, in costs.

WILLIAM TWIFORD,
ROBERT TURNER.
PHILLIPS & SEWALL, *Proctors.*

SOUTHERN DISTRICT OF ALABAMA, *ss:*

William Twiford, late master and part owner of the schooner William Ozman, being duly sworn saith, that the material allegations in the above libel are true, to the best of his knowledge and belief.

WILLIAM TWIFORD.

Subscribed and sworn before me, this seventh day of January, 1850.

JOHN FITTS, *Clerk.*

Filed January 7th, 1850.

JOHN FITTS, *Clerk.*

Libellants' bond.

UNITED STATES OF AMERICA,
District court of the United States
for the southern district of Alabama.

Know all men by these presents, that we, Charles D. Dickey, , are held and firmly bound unto John Fitts, clerk of the court aforesaid, in the just and full sum of one thousand dollars, lawful money of the United States, which sum well and truly to be paid to the said John Fitts, his successor in office, his executors, administrators, and assigns, jointly and severally, firmly by these presents; sealed with our seals, and dated this 7th day of January, in the year of our Lord one thousand eight hundred and fifty.

The condition of the above obligation is such, that whereas, Robert Turner and William Twiford have this day filed their libel in the court aforesaid against the steamer Oregon: Now, therefore, if the above bound Charles D. Dickey shall well and truly pay or cause to be paid to the said John Fitts, clerk as aforesaid, his successor in office, his *his* executors or administrators, all such costs and damages as shall be

awarded against them for the wrongful suing out of admiralty process against the said steamer Oregon by the said libellants, in case they fail in said suit, then the above obligation to be null and void, otherwise to be and remain in full force and effect.

CHARLES D. DICKEY.

Filed January 7th, 1850.

JOHN FITTS, *Clerk.*

Writ of seizure.

And afterwards, to wit, on the seventh day of January, A. D. 1850, the following writ of seizure was issued from said court, to wit:

UNITED STATES OF AMERICA,
District court of the United States
for the southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded that you attach, seize, and safely keep the steamboat or vessel called the Oregon, her tackle apparel. and furniture, whereof R. A. Hiern is master, and now lying at the port of Mobile, so that you have said steamboat, her tackle, apparel, and furniture before the judge of the district court of the United States, at a term of said court, to be held in and for the said southern district of Alabama, at Mobile, on the third Monday of January instant, to answer the libel of Robert Turner and William Twiford. Herein fail not, and have you then and there this writ.

Witness the honorable John Gayle, judge of the court aforesaid, this second Monday of December, 1849.

Issued the seventh day of January, 1850.

Attest: JOHN FITTS,
Clerk so. dist. Ala.

Marshal's return.

Received 7th January, 1850, and on same executed the same by seizing and taking into my possession the steamer Oregon, her tackle, apparel, and furniture, and handing a copy to Captain R. A. Hiern.

C. BINGHAM, *U. S. Marshal.*

Monition.

UNITED STATES OF AMERICA,
District court of the United States
for the southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

Whereas Robert Turner and William Twiford have exhibited their libel in the court aforesaid, stating that the steamer Oregon, whilst per-

forming voyages on the high seas within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable court, to wit, in the Bay of Mobile, became indebted to said libellants for damages caused by a collision with the schooner William Ozman, whereof the said libellants are owners, in the sum of eighteen hundred and six $\frac{7.0}{100}$ dollars; and whereas, the judge of the court aforesaid has ordered the third Monday of January instant, for all persons concerned to be cited to appear at the place of holding said court, in the city of Mobile, and show cause, if any they have, why judgment should not pass as prayed: You are, therefore, hereby commanded to cite and admonish all persons having any right, title, or claim in or to said steamer, her tackle, apparel, and furniture, by publicly affixing (showing) this monition on the most public part of said steamer for some time, and by leaving with the master of said steamer a true copy thereof, to be and appear at the time and place aforesaid, at the court aforesaid, and also to attend upon every session to be held there and from thence, until a definite sentence shall be promulgated in said business, inclusively, if any shall think it their duty so to do; to hear, abide by, and perform such judicial acts as are required to be done in the premises, and further to do what unto law and justice shall appertain; and whatsoever you shall do in the premises, certify unto the court aforesaid at the time and place aforesaid, together with these presents.

Witness the Hon. John Gayle, judge of the district court aforesaid, this second Monday of December, in the year of our Lord 1849.

Issued the seventh day of January, 1850.

Attest: JOHN FITTS, *Clk. so. dist. Ala.*

I waive the advertisement. Mobile, January 7th, 1850.

R. A. HIERN.

Marshal's return.

Received 7th January, 1850, and on same day executed this monition by putting up a copy on the most conspicuous part of the boat, and handing a copy to Capt. Hiern.

C. BINGHAM, *U. S. Marshal.*

Claim.

THE STATE OF ALABAMA,
Mobile county.

Before me, clerk of the district court of the United States for the southern district of Alabama, came Roger A. Hiern, who maketh oath and saith, that he is master of the steamboat Oregon, now lying in the port of Mobile, and a part owner of the same, and that he intervenes in the suit of Robert Turner and William Twiford, in the said district court, as well for his own interest as the interests of all others interested in said boat; that he is fully authorized to intervene on account of the other owners, and that his claim as owner is true and bona fide. He

2807

further states, that at the time of the arrest he was lawfully in possession as master.

R. A. HIERN.

Sworn to and subscribed before me, this 19th day of January, A. D. 1850.

JOHN FITTS, *Clerk.*

We acknowledge ourselves to be bound to John Fitts, clerk of the district court aforesaid, for the payment of all costs and expenses which shall be awarded against the claimant by final decree of the said district court in the cause above mentioned, or on appeal by the appellate court.

Witness our hands and seals.

R. A. HIERN,
C. LE BARON.

Filed 19th January, 1850.

JOHN FITTS, *Clerk.*

And afterwards, to wit, on the nineteenth day of January, in the year of our Lord one thousand eight hundred and fifty, came R. A. Hiern, master and part owner of the said steamer Oregon, and filed his answer in the words and figures following, to wit:

Answer.

THE DISTRICT COURT OF THE U. S.,
Southern district of Alabama.

To the Hon. John Gayle, judge of the district court of the district aforesaid.

The answer of R. A. Hiern, part owner and master of the steamboat Oregon, who intervenes for himself and the other parties in interest, to the libel exhibited in said court by Robert Turner and William Twiford, owners of the schooner William Ozman, against said boat, her tackle, &c., &c.

That the defendant, at the date of the arrest of said boat, her tackle, &c., &c., was part owner of the same, and lawful bailee as master, and authorized to represent the other parties in interest. The defendant admits, that at the date aforesaid the schooner mentioned in the libel was in the bay at Mobile, loaded with cotton; whether bound as stated in the libel this defendant can only answer from information which corresponds with the libel. This defendant does not know the burthen of said vessel or its equipments, and cannot admit the allegations of the libel in these particulars, nor does he admit the vessel was tight and staunch, and strong; but, on the contrary, he avers she was old, insufficient, and nearly worn out.

This defendant, in answer to the 3d article, says, that about two o'clock in the morning the said vessel was in the bay of Mobile, near

Dog river, at the date specified, more than one mile or a mile and a half distant from the line of voyage to the place of her destination in the fleet, and was clearly visible to the respondent, who was on deck in command of his boat, and with the principal pilot in the wheelhouse, with steersman and with two watchmen on deck; he then was on his voyage from New Orleans to Mobile. The said steamer was on the west side of the bay, choosing that line to avail the line of voyage between the city and the flat below the city, and upwards of a mile to the west of that line. The said schooner, at the time she was seen, was moving on a course entirely apart from the course of the steamer, and involving no danger of a collision. The respondent states there was but one man visible on deck, and he was steering, with two or three tiers of cotton on deck. That while the schooner was proceeding on a course which, if followed, no collision could have taken place, the vessel was suddenly wheeled round and run upon the steamer midships; that this movement of the vessel was produced by the act of the steersman of the schooner in jibbing the foresail and rounding the vessel. This respondent states, that before this movement in the schooner was made, there was no change of course or direction of the steamer; that if the schooner had maintained her course, none would have been required, and that after this movement no precaution could have been taken to avoid collision. This movement of the schooner was sudden, and while the vessels were near together, this respondent states that the steamer bore off as far as she could after the action of the vessel was perceived. This respondent states, that no portion of the steamer struck the schooner, but that the jib-boom of the schooner ran into the steamer, and as she wheeled away it was broken, and started, as he since learns, the old and rotten timbers of the schooner. Respondent further states, in reference to this article, that he does not admit that any alarms or cries were made on the schooner before, or any claim of assistance after, the collision; but, on the contrary, this respondent states, that said vessel seemed, when first seen, to be going on a steady course not in the track of the steamer, when a sudden change was made in her course, and she was thrown on the track of the steamer. This respondent states, that the steersman of the schooner did not see the steamer until she was near him, and, being suddenly aroused, changed the course of his vessel without knowing what he was doing. This respondent states, that the blow given to his boat was not severe, and that he did not see that the schooner was affected; that he made a call to them for information, but obtained no answer; and that he saw the schooner going off apparently without injury, and so he did not render aid, which would otherwise have been cheerfully rendered. This defendant does admit the allegations of the libel as to the course of the voyage of the schooner, nor of the changes made in the course, nor that a warning was given, nor that the officers of the steamer were malicious or careless; but in regard to the last allegation he says, that his boat was moving cautiously, as is habitual at night to its management, and that it was not necessary, nor could it have been beneficial, to have altered her speed.

In answer to the 4th and 5th articles the respondent says, that the night on which the collision occurred was clear and starlight, and the moon was up in her last quarter; that the collision occurred about two o'clock in the morning in the waters of Mobile bay; that the schooner was plainly and distinctly perceived by the respondent and by the pilot of his boat, and by different persons on duty. This respondent wholly denies that it was impossible for the schooner to avoid the collision when she discovered the steamer, unless the fact is that the steamer was discovered after the sudden and unaccountable change in the direction of the schooner took place. This respondent has supposed that the steersman of the schooner may not have seen the steamer till she was near by, and in the confusion and hurry of his mind may have given the false direction to his vessel without exactly knowing what he was about. This motion, sudden and unexpected, threw the head of the vessel directly upon the steamer at right angles to it, and the only motion of the steamer consequent npon this act of the schooner was to bear further off and diminish the force of the blow; that had the steamer continued her course without reference to this act of the schooner, the whole power and force of the schooner would have been expended upon her; as it was, the blow was light, the steamer receiving but one wound, but under any other circumstances the damages would have been great. If the schooner had been tight, staunch, and strong, the damage to her would have been inconsiderable; but she was weak, rotten, and incapable. Respondent alleges, that he is informed and believes that the master of said schooner, when he left Mobile, was carried on board drunk, and he says that only one person was visible during this time. This respondent states, that this vessel was not a regular lighter, but a water-boat, and that the lading was entirely too great for her capacity.

To the sixth article respondent answers, that he does not know and cannot answer in reference to the allegation in this article, and does not admit the same. All of which this defendant submits to the court, and is ready to prove, and maintain by proofs to be taken in the court. And now having fully answered, this respondent prays that the libel may be dismissed, and the libellants taxed with the costs.

THE STATE OF ALABAMA, *Mobile county.*

Before me, clerk of the district court of the United States for the southern district of Alabama, R. A. Hiern, who maketh oath and saith, that this answer is true in substance and matter of fact.

R. A. HIERN.

Sworn to and subscribed before me, this 19th day of January, A. D. 1850.

JOHN FITTS, *Clerk.*

Filed 19th January, 1850.

JOHN FITTS, *Clerk.*

Restoration bond.

UNITED STATES OF AMERICA,
District court of the United States
for the southern district of Alabama.

Know all men by these presents, that we, R. A. Hiern and Sands & Co., are held and firmly bound unto Robert Turner and William Twiford, in the just and full sum of thirty-six hundred and twelve dollars, for the payment of which, well and truly to be made, we and each of us bind ourselves, and each of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents; sealed with our seals, and dated this ninth day of January, in the year of our Lord one thousand eight hundred and fifty.

The condition of this obligation is such, that whereas, the said Robert Turner and William Twiford have exhibited their libel before the court aforesaid, setting forth and alleging that the steamer Oregon, which, performing voyages on the waters of the sea within the jurisdiction of the said court, became indebted to the said libellants in the sum of eighteen hundred and six dollars; and whereas, the said steamer Oregon, her tackle, apparel, and furniture, have been attached and are now in custody, &c., to answer said ; and whereas, it has been ordered, that the said steamer Oregon, her tackle, apparel, and furniture, be restored to her master or owners, on their giving bond with good security to have the said steamer Oregon forthcoming to abide the decree of the honorable court:

Now, therefore, the condition of the obligation is such, that if the above bound R. A. Hiern and Sands & Co., or either of them, shall have the said steamer Oregon, her tackle, apparel, and furniture in her and their present condition before the district court aforesaid, at a term thereof to be held on the third Monday of January instant, forthcoming, to abide by and answer such decree as the said district court may make touching the premises, and shall abide by and perform such decree or judgment as his honor may at any time pronounce in the premises, and shall well and truly pay unto the said Robert Turner and William Twiford all such sum or sums of money as the said district court shall or may at any time decree unto them in the premises, together with all costs and damages, then this obligation to be void, otherwise to remain in full force and effect.

R. A. HIERN, [L. S.]
SANDS & CO. [L. S.]

Signed, sealed, and delivered in presence of—

And afterwards, to wit, on the ninth day of January, in the year of our Lord one thousand eight hundred and fifty, the following writ of restoration issued out of the office of the clerk of said court, to wit:

Writ of restoration.

UNITED STATES OF AMERICA,
District court of the United States
for the southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded, that you restore the steamer Oregon, her tackle, apparel, and furniture to her master; and how you shall execute this precept make known to the judge of the district court of the United States, at a term of said court, to be held in and for said southern district of Alabama, at Mobile, on the third Monday of January, 1850. Herein fail not, and have you then and there this writ.

Witness the honorable John Gayle, judge of the court aforesaid, this second Monday of December, 1849.

Issued the ninth day of January, 1850.

Attest: JOHN FITTS,
Clk. so. dist. Ala.

Return.

Received 9th January, 1850, and executed same day by restoring the steamer Oregon, her tackle, apparel, and furniture to R. A. Hiern, her master.

C. BINGHAM, *U. S. M.*

And afterwards, to wit, at a special term of said district court, begun and held in and for said district, at Mobile, on the third Monday of January, in the year of our Lord one thousand eight hundred and fifty, the following proceedings were had, to wit:

Orders.

On application of respondents' proctors, it is ordered by the court, that this cause be continued until the next regular term of the district court, and that a commission issue to take the depositions of Lorenzo Thompson, Mathew Peterson, and James McGee, by interrogatories, on giving ten days' notice; and it is further ordered, that the depositions of William Twiford, John Broline, William Patterson, Samuel Augustus, William Thompson, and Jackson, be taken, on giving ten days' notice.

And afterwards, to wit, at a term of said court begun and held in and for said district, at Mobile, on the first Monday of May, in the year of our Lord one thousand eight hundred and fifty, the following proceedings were had, to wit:

On motion of respondent, it is ordered by court, that this cause be continued.

December term, 1850. It is ordered that the testimony in this cause be published.

The testimony on file in this cause is as follows, to wit:

Testimony.

ROBERT TURNER AND WILLIAM TWIFORD, libellants,
vs.
THE STEAMER OREGON, &c., R. A. Hiern, master,
respondents.

District court of the United States for the southern district of Alabama.
In admiralty.

TAKE NOTICE.—That on Monday, the fourth day of February next, at the office of Alexander McKinstry, esq., in the city of Mobile, and before the said McKinstry as United States commissioner, we will proceed to take the depositions of William Twiford, John Broline, Samuel Augustus, William Thompson, William Patterson, and Jackson, witnesses for the libellants in the above entitled cause, in pursuance of an order made by the judge of the district court in said cause; and the examination of said witnesses, if not completed on that day, will be continued from day to day thereafter, until completed, when and where you may attend and cross examine said witnesses, if you see fit.

Mobile, January 21, 1850.

PHILLIPS & SEWALL,
Proctors for libellants.

To Messrs. CAMPBELL & CHANDLER,
Proctors for respondents.

We acknowledge service of the within notice, this 22nd day of January, 1850.

CAMPBELL & CHANDLER, *Defts. attys.*

JOSEPH ROCCA et al.
vs.
STEAMER OREGON.
Release of Tyson.

We hereby release and relinquish all and every claim that we have, or hereafter may have, on Anthony Tyson, the witness and pilot on the steamer Oregon, on account of the collision between the steamer Oregon and the schooner Wm. Ozman, that happened, the subject of this suit, and on account of any loss that said schooner and its owners may have sustained on account of said collision, and from all damages that may arise from any suit between the said plaintiffs and the owners of the said Oregon, and from all costs, and from all claims and demands, the said Oregon and its owners have on said Tyson.

Witness our hands and seals, this 3rd day of November, 1850.

CHARLES L. REYNOLDS,
As attorney for all the owners. [SEAL.]
JAMES L. DAY, [SEAL.]
ROBERT GEDDES, [SEAL.]
R. A. HIERN, [SEAL.]
R. D. HIERN, [SEAL.]
JOHN GEDDES, [SEAL.]
ABRAHAM WOLF. [SEAL.]

I, Alexander McKinstry, commissioner, do hereby certify, this is the release produced by Anthony Tyson, on his examination before me, and which was objected to by Messrs. Sewall & Gibbons as being insufficient, and as referred by me in the recital in his deposition as the annexed release being exhibited by the witness.

Witness my hand and seal.

ALEXANDER McKINSTRY, *Comm'r.*

In a certain cause pending in the district court of the United States of America for the southern district of Alabama, at Mobile, in admiralty, wherein Joseph Rocca et al. are libellants, and the steamer Oregon, &c., and R. A. Hiern, are respondents; and also Robert Turner and William Twiford are libellants and intervenors, and steamer Oregon, &c., and R. A. Hiern, are respondents.

I, Alexander McKinstry, commissioner for the taking of affidavits and bail to be used in the United States courts under the acts of Congress, by virtue of the appointment of the honorable the circuit court of the United States for the southern district of Alabama, have called and caused William Twiford, John Browline, Samuel Augustus, Joseph Swift, Anthony Tyson, to come before me at my office in the city of Mobile, at the request of the respondents. The said Twiford was examined separately and apart; the said respondent having objected to the competency of the said Twiford. The objection was overruled, and the said Twiford having been by me duly and carefully cautioned, examined, and sworn, did depose and say, and doth depose and say:

Testimony of Twiford.

That he was master of the schooner William Ozmon when the occurrence took place; that he took in a load of cotton on the evening of the seventh; the tide was very low at the shipper's press; that he took in one hundred and forty bales of cotton; that when the vessel was loaded she was aground; that they worked until twelve or one o'clock that night, before they succeeded in getting the schooner off; that the schooner proceeded down the bay with a north wind until she got down below the pass, when he took in his jibs and mainsail, and set the foresail, and so proceeded down the bay under the foresail; between two and four o'clock made a steamboat *being* south: that he then altered his course south by westward, so as to go west of the steamboat; that when the steamboat was first discovered she was distant about one mile or one mile and a half; that he kept on in that course until, according to his judgment, the steamboat would have cleared the schooner one hundred yards to the eastward; all at once she shifted her course across the bows of the schooner; when the steamboat made the change she turned to the eastward; that the steamboat was about fifty yards distant when she changed her course; that as soon as she observed that the steamboat had changed her course, he ordered the man at the helm of the schooner to put her helm hard down, meaning thereby, hard down to the starboard; but the words "to the starboard"

were not spoken, though that was the customary mode of giving the order; that the foresail was on the starboard side, and had been so ever since the schooner had changed her course; when the order was given the sail jibbed to the larboard-side of the schooner; that he was on the top of the cotton, and when the sail jibbed he had to fall down to his stomach to avoid being knocked down by the boom of the sail; that after the sail had jibbed he arose to his feet, and as he arose the steamboat was coming in contact with the jib-boom of the schooner, the starboard-side of the steamboat striking the jib-boom of the schooner, just forward of the wheelhouse, by the gangway; that the effect of the blow was to carry away the bowsprit, the nightheads, and to split to the water's edge; that he hailed the steamboat to take them off before she got clear, because the schooner was sinking; that he hallooed manfully, as hard as he could, several times; that in about twenty or twenty-five minutes the schooner filled with water; that the schooner did not sink; that he made sail on her and turned her in towards shore, and proceeded towards the shore until the schooner grounded; as soon as the schooner grounded she rolled over on her beams-end, and the deck load tumbled off; that when the schooner filled with water, the long-way of the cotton prevented the schooner from sinking, but the water was some two feet above the deck; that it was about three quarters of an hour from the time of the collision until the schooner grounded; that the distance from the place of the collision to the grounding was about a mile; that it was terrible rough when collision occurred, and the wind kept increasing until day; at daylight he saw but one in the bay, and that was a schooner at anchor about five miles down the bay; that he, with the cook and three men, took a boat and went down to the schooner at anchor; that the schooner took them on board and brought them up to town; that when the cotton tumbled off from the schooner the cotton floated, and they were unable to save any of it; that they found it very hard to save themselves, as their boat while going down to the vessel that brought them to town came very near filling with water two or three times; that from the time that this deponent first saw the steamboat, until the time of the collision, he was all of the time on top of the cotton, that is, the highest part of it, between the foremast and the mainmast, on the look-out; when deponent first got out of the pass, and the foresail had been set, deponent told one of the crew to steer the schooner about south, and the balance of them might lay down; but discovering the steamboat, he told them not to lay down until the schooner had passed the steamboat; that deponent and the mate were on top of the cotton all of the time, and one of the men, Francis, was on the forecastle; that at the time that he ordered the helm of the schooner to be put down, the steamboat was from thirty to fifty yards distant from the schooner; that if the helm of the schooner had not been moved at all, the steamboat would have come into collision with the schooner necessarily from their position at the time that the order was given; that before deponent gave the order to put the helm down, he hallooed as loud as he could halloo to the steamboat

that she would run into the schooner; that he hallooed three or four different times as loud as he could halloo; that the steamboat still kept on her course, and never stopped at all; that the object of deponent in giving the order to put the helm down was, that he saw that the steamboat would necessarily come into collision with the schooner, and the only way to avoid it was to put the head of the schooner around to the eastward; that the time between the giving the order to put the helm down and the collision did not exceed one minute; that the boat did not stop her engine at all, nor did deponent see that the steamboat slacked her motion in the least; that at the place where the collision took place, the channel was about eleven miles wide, and there was plenty of room for the steamboat to have passed, either to the westward or to the eastward of the schooner; that it was a beautiful moonlight night; that deponent could see the houses on each side of the bay; that deponent was half owner of the said schooner at the time of the collision; that Robert Turner owned the other half; she was about fifty-four tons burden; that deponent, William Browline, the mate, William Thompson, Samuel Augustus, and a black boy named Peter, who was the cook, constituted the crew of the schooner; that the said schooner was perfectly tight and staunch at the time; deponent had been on her three years; that she was sufficiently tackled and appareled, and had a plenty of everything; that in the summer of 1848, the said schooner had new upper works and new stern put on her by one Mr. Foster, in the city of Mobile; that the cost of repairs were between thirteen and fourteen hundred dollars; that this was a thorough repair of said schooner—everything was done that was necessary; that deponent has had and carried on said schooner down the bay one hundred and eighty bales of cotton at a time; that the load that was on the schooner at the time of the collision was for the Sardinian ship Maria Theresa; that twenty-eight bales was in the hold of the vessel, and the remainder upon the deck, arranged in two whole tiers on the deck, and a third or half tier between the masts; that, for the last fourteen years, deponent has been accustomed to the navigation of Mobile bay; that one year and a half of that time he has been engaged in the lightering of cotton down the bay, and the balance of the time in carrying in water to the shipping; that deponent is accustomed, whenever he is going down the bay at night, if the wind blows from the north, that he keeps his vessel to the westward; that he does not know of any particular track that lighters pursue in going down the bay; that his motive for taking the course to the westward is, that if he should be compelled or have occasion to anchor, the trough of the sea would be too rough, unless the vessel was well into the westward; that occasionally lighters have to anchor, because it is too rough to lay alongside of the vessel to which they are bound; that deponent used every precaution in his power to avoid the collision; that he had not been below deck five minutes in the time between leaving the wharf and the collision; that William Thompson was at the wheel at the time of the collision, and had been there from the time the vessel left the pass; that the value of the schooner was two thousand dollars;

that there was no insurance on her; that deponent took one other schooner and went down to save the said schooner Ozman if possible; that it blew very fresh and they broke their tackle, and they were obliged to abandon the said schooner Ozman; that she was afterwards sold as she lay, and at auction, for one hundred and two $\frac{50}{100}$; that she was sold by the Jones's, and bought by one ; that the sails and rigging brought one hundred dollars in addition; that the agent of Messrs. Isaac Bell, jr., & Co., Mr. H. Brown, delivered the cotton to deponent. That here the libellants closed their examination, and the respondents cross-examined.

Twiford X-examined.

That deponent had been on the said schooner three years; that she was seven or eight years of age; that she was a lighter before deponent bought her; that after he bought her she was used as a water-boat; that the only alteration that was made to convert the schooner from a lighter to a water-boat was to put a tank in her; that by taking the tank out her construction was the same as any other lighter in the bay; that the tank was out and the bulkhead down, at the time that the collision took place; that the schooner was about one mile below Dog River bar when he first saw the steamboat; that it was between two and three o'clock, as near as he could come at it; that he first saw the steamboat right ahead, while the schooner was steering south; that there was no light set on the schooner.

Question. Why did the vessel come head to the westward, with the helm to the starboard?

Answer. The foresail jibbed before the man got the helm down, as the schooner was dead before the wind; that the schooner steers with a tiller; that at the time of the collision the schooner was heading south by west half west, or thereabouts, and the steamboat, by the collision, threw the head around to the northward; that at the time deponent first saw the steamboat, the steamboat was heading to the northward; that the schooner was about thirty or fifty yards distant from the steamboat when she changed her course; that before that she had been heading north, she changed her course to the westward; that when the steamboat changed her course the schooner was heading about south by west half west; that there would have been no collision if the vessels had kept their course after the steamboat had hauled to the westward, as above stated; that if the course of the vessels had not been changed, the steamboat would have struck the schooner in her fore-rigging, the steamboat striking with her bow; that by the jibbing of the foresail the course of the schooner was changed more to the westward; that it was not a minute from the giving of the order to put the helm starboard to the time the foresail jibbed; that it was between half of a minute and one minute; that the jibbing of the foresail and the collision occurred at the same time, or as near as could be; that the steamboat struck the tip end of the jib-boom first, the steamboat coming in contact immediately forward of the wheelhouse; that deponent hallooed before the

collision, and before the sail jibbed; that he did not see any one on board of the steamboat; that if the steamboat had not changed her course towards the westward the collision would not have occurred, as he believes, as the steamboat would have gone to the eastward and the schooner to the westward, and passed each other at the distance of about twenty or thirty yards. That deponent did not halloo until the steamboat changed her course; that she changed her course suddenly; that the schooner's course was changed a point to the westward as soon as she discovered the steamboat; that this course was continued until he came near to the steamboat, when, as he saw the steamboat continued to near the schooner, he then kept the schooner as far to the westward as she would bear without jibbing; that the course of the steamboat was not changed from the time that deponent first saw her until the change to the westward as aforesaid, so far as he knows; that previous to the change he saw but one light on the steamboat; after the change he saw two lights; that after the collision the steamboat did not stop, but passed on; that he did not see any one on the steamboat after the collision; that after hallooing to the steamboat, deponent turned to his schooner to see what he could do to get her into the shore; that the schooner filled with water in about twenty or twenty-five minutes; that it was about ten minutes before the vessel got under headway towards the shore; that it was about ten or fifteen minutes after this before the schooner was filled with water, and it was about half an hour after the schooner filled with water that she grounded; that the whole of the vessel was filled with water; that the sea was rough, the wind was high and increasing; by daylight it was blowing hard; day was just breaking when the schooner grounded; that the sun was about an hour or three quarters of an hour high when they left the schooner in the little boat; that they got into the boat a little after sunrise; that from the time that the schooner struck the ground until he got into the boat they had hold of the rigging, with his feet on the mast; that the water was eleven or twelve feet deep where the vessel grounded; that the cotton was all off from the deck by between daylight and sunrise; that a good deal of cotton was picked up in a damaged state, don't know how many bales; that the schooner General Shields was the schooner on which they came to town; it was about 8 o'clock when they got on board of her; that twenty-six of the bales that were in the vessel's hold remained there; two of the bales floated out; that the hatches were not barred, so that when the water was on the deck they came off; that the sail that was hoisted to get the vessel to the shore was a gaff top-sail hooked on to the jib-halyards, and tacked down to the hawser-pipe, the starboard hawser-pipe; that larboard hawser-pipe was broken off; that the bowsprit was unshipped by starting the night-heads; that the flying jib-boom was only sprung; that the bowsprit shrouds on the larboard side were gone; that deponent had been drinking somewhat, but not so as to make him intoxicated; that he had been somewhat merry, but not so but that he knew how to attend to his business; that he commenced drinking in the morning, and the last glass that he took was about four

o'clock in the evening; that he drank as many as he thought he could safely carry; that although he had been drinking he was not intoxicated; that after the last drink above spoken of he went home, took his supper, went to bed, took a nap, and went to his vessel; that it was about eleven o'clock when he reached the vessel; that he drank a glass about eleven or twelve o'clock at night—it was a glass of brandy punch; that the loading of the vessel was completed at about four o'clock in the afternoon; that deponent had not seen the crew drink but one glass, and that was after the cotton was all out of the press, but all of it was not on the vessel, the most of it was; that when deponent returned to the vessel he found the crew on the wharf waiting for the tide; that he does not know of their drinking, except as above; that he has not conversed with the witnesses about their testimony in this cause; that he has only told them to tell the truth.

Twiford re-examined by libellants.

Re-examined by the libellants.—That the jibbing of a sail on a vessel causes the bow of the vessel to turn to the opposite way from that towards which the sail jibs; that deponent was not confused until he saw that there was no chance of avoiding the collision; that then he was scared; that deponent has been in the habit of drinking ardent spirits since he was a boy until recently; when he found that he was censured in this matter for drinking, he joined the Sons of Temperance and intends stick to it; that he had not been drinking in the day before the collision more than usual.

WILLIAM TWIFORD.

Subscribed and sworn to before me.

ALEXANDER McKINSTRY, *Com'r.*

Testimony of Browline.

At the request of the said respondents the said Browline was examined separately and apart; and the said Browline having been duly and carefully examined, cautioned, and sworn, did depose and say, and doth depose and say: That he was mate on the schooner William Ozman at the time of the collision with the steamer Oregon; that on the seventh day of September, 1849, the vessel was hauled up in the dock at the shipper's press to take in a load of cotton of one hundred and forty bales; between one and two o'clock of the morning of the eighth we hauled the schooner out of the end of the wharf; the mainsail and the two jibs were hoisted, and shoved off from the wharf; the deponent took the helm; the wind was to the north, perhaps a little to the eastward; that the vessel proceeded under these sails; that in going through the pass the vessel grounded on the north bank of the pass; that the vessel got off; that at or above the upper point of Dog river they discovered the steamer Oregon; that deponent could only see the smoke; that by that the steamer appeared to the southward of us; that the steamer was then a mile and three-quarters or two miles distant;

that the only sail that the schooner had on at that time was the foresail, the others having been previously lowered; that when this was done, William Thompson took the helm, and he had it at the time when the steamer was first seen; that when the steamer was discovered, the man at the helm was told to keep the vessel more to the west, so that the schooner might pass to the westward of the steamer; the sail was out on the starboard-side; the wind was fresh; that the deponent did not notice the steamer any more; that after the vessel was turned to the westward, for a time, the captain told them to keep the vessel steady; that deponent was on the forecastle seeing that the chains and anchor was ready, and did not notice the steamer until he heard Captain Twiford say that she had altered her course; deponent then went up on top of the cotton; Captain Twiford hallooed to the man at the helm to put the helm hard down; at the same time he told the man to put the helm hard down, the foresail jibbed over; that deponent, the captain, and Samuel Augustus were all on the top of the cotton; that deponent and the captain hallooed as loud as they could to the steamboat to stop; that as soon as the helm was put hard down, the foresail jibbed to the larboard-side for an instant, and then swung back to the same side that it was before, bringing the head of the schooner towards the eastward from the course that the schooner was steering; that deponent first saw the steamer near to the schooner; the steamer was steering north-northwest or north by west; that at that time the steamer was about twice the length or twice and a half the length of the schooner distant; the schooner was at that time steering about south by east; that the schooner then run into the steamer, striking the steamer back of the gangway and forward of the wheelhouse with the bowsprit of the schooner, and the bow of the schooner striking the steamer; that it took the bowsprit of the schooner out all together, and that opened the planks from the stern; that the steamer slewed the schooner up to the northward and westward before the schooner got away from her; that after the steamer got away from the schooner, deponent went below to see the damage and found the planks all open forward, and found that the schooner would sink; that they then hallooed to the steamer to stop and take them off; that they hallooed loud, but that they could not see that the steamer stopped, and the steamer passed on; deponent could see whether the steamer stopped or not; that immediately afterwards, they succeeded in getting her head towards the shore; that they threw off the cotton from the forward part of the schooner to lighten the schooner, until they found that she continued to fill with water; that by the time they reached a place where the water was shoal enough for her to touch bottom, the vessel was filled with water; that when she grounded the hull touched first, and the bows was then afloat; but as soon as she grounded, her head swung to the eastward, and the vessel turned over; that the wind was all this time fresh and increased towards morning; that the collision took place about a minute after Captain Twiford sung out that the steamer had changed her course; that if the steamer and the schooner had kept the course they

were then going, the collision would have taken place, and the bows of the steamer would have struck the schooner somewhere on the larboard side; that the direction of the schooner was changed about one point and a half by pulling her helm down; that deponent did not see any one on the steamer; that there was on board of the schooner Capt. Twiford, deponent, William Thompson, and Samuel Augustus, and a negro boy, the cook; that all but the negro were on the deck at and previous to the collision; that if the helm of the boat had been aport, instead of to the starboard, it would have turned the head of the schooner to the westward, and the collision might have been avoided, perhaps; deponent says, that if he had had charge of the vessel, he could not have avoided the collision; that when the captain came on board of the schooner, he was not drunk nor intoxicated; that he was sober; that he appeared as capable as usual; that deponent had been in the vessel fourteen days previous to that time; that they did not leave the wharf until one o'clock, because the vessel was on ground, and they did not get her off until that time; that Captain Twiford helped them to get her off; that while deponent was at the helm, Captain Twiford was on the cotton on the look-out; that nobody on board the vessel was under the influence of ardent spirits; that there was no liquor on board; that deponent drinks sometimes; that it was a fine bright night; that the vessel was tight; that the foremast was rotten and not safe to carry sail on; that a part of it was very much damaged; that the rest of the vessel was sound; that when Thompson took the helm, the captain was on the top of the cotton on the larboard-side; that Captain Twiford was the first person that spoke of discovering the steamer; that he continued on the top of the cotton until the time of the collision. Here the examination closed, and the cross-examination commenced.

Browline X-examined.

That deponent had been on the schooner fourteen days; that he is not acquainted with the navigation of the bay; that the schooner was in the usual track followed by vessels going to the shipping; that there was but one ship in the bay, and she was lying to the eastward of where the collision took place; that when deponent left the helm, the vessel was going about south; that at the time the captain sung out that the steamer had changed her course, the steamer was going north by west half west, and the schooner was going south half west; that they were then distant about twice and a half the length of the schooner; that the putting the helm hard down caused the schooner to turn about one point and a half to the eastward; that the vessel would not mind her helm so well, on account of the jibbing of the sail; that when the vessels came into collision, the foresail of the schooner was out on the starboard-side; that after the collision, the schooner's head was to the northwest, and the steamer more to the north; that at the time of the collision, the head of the schooner was south by east; that schooner ran into the steamer; that the course of the schooner was not altered until they found that they could not go to the westward of the steamer;

that deponent saw the captain take two glasses of liquor on that day; that about nine o'clock in the morning, Captain Twiford was on board the schooner, again at eleven, again about three, and remained until about five, and came aboard again about eleven; that bowsprit did not break.

JOHN BROWLINE.

Subscribed and sworn to before me.

ALEXANDER McKINSTRY,
Commissioner.

Testimony of Augustus.

At the request of the respondents, the said Samuel Augustus was examined separately and apart, and the said Augustus having been by me duly and carefully examined and cautioned, and sworn, did depose and say, and doth depose and say: That he was a deck hand aboard of the schooner William Ozman; that the schooner left Mobile on the seventh, between one and two o'clock in the morning; that Captain Twiford, Mr. Browline, Mr. Thompson, and this deponent and the cook, a negro boy; that we kept under way, under a flying jib, a jib and mainsail, until the schooner got out of the pass; that, after the schooner got out of the pass, took in the head sails and mainsail and furled them, and set the foresail; that, after the foresail was set, deponent bailed the boat out; that deponent saw a steamboat ahead; that captain asked the hands that were forward, if we had seen the steamboat; that the hands told him yes; that the captain then told the man at the helm to keep her off south by west; that the vessel continued in that course for about five or ten minutes, calculating that the steamer would continue in her course, and the schooner and the steamer would pass at the distance of twenty yards, and the steamer would have a wide berth; the schooner would pass the steamer to the westward; at this time the foresail was on the starboard-side, the wind was about north, very strong breeze; that when we come to observe how the steamer was steering, it was found that she was crossing the bows of the schooner; that the captain sung out to stop the steamboat; she was then about ten or fifteen yards off from the schooner; that he hallooed loud enough for any one to hear him; that after Captain Twiford saw that the steamer was getting so near to the schooner, and that he saw no one on board of her, he then sung out to the man at the helm of the schooner to put his helm down; that when he put his helm down, the foresail jibbed over, from keeping her off so far before; by that time the steamboat struck; we was then in the steamboat; that the steamer struck the schooner on her larboard bow, forward of the fore-rigging; that the forward part of the steamer, just forward of the wheelhouse, near the gangway, struck the schooner; that the steamer kept her way on; that the captain of the schooner sung out to stop and assist us; that the steamer did not stop at all, kept right on; after the captain found that the schooner was in a sinking condition he commanded to heave the cotton overboard, to try lighten the schooner to get her in shore,

but the water gained on us so fast that we could not do any thing with it, the schooner filled and struck on the bottom and turned over; that all the hands remained on her, on her beam, until daylight; that at daylight we tried to save ourselves; that the cotton all floated off; that by the collision all of the planks of the schooner were started from the stern, she was opened forward; that all of the head-works, bowsprit, jib-boom, and the sails on them, were carried away and hung alongside; that at the time of the collision was heading south by west; that if the steamboat had stopped, the collision would have been avoided; that nothing could have been done by those on the schooner to prevent the collision; that they had done before what could be done by putting the helm down, and that was the only way that any thing could be done; that if the helm had been put the other way instead of hard down, the collision would not have been prevented, as there was not room to pass to the westward of the steamer unless the steamer had stopped; that at the time of the collision the steamer was steering north-northwest; that she was apparently crossing the bows of the schooner; that deponent did not see any one on the steamer at any time, either before or after the collision; that he heard no noise from the steamer; that it was a clear starlight night; that there was no moon; that a vessel could be seen at some distance; that in the morning the wind blew hard, and the sea was rough; that after the steamer was discovered, the captain was on the top of the cotton, the cotton was over the galley; that from the time that the steamer was discovered until after the collision took place, Captain Twiford was backwards and forwards on the cotton; that all hands were on deck, and deponent and Browline forward; that Mr. Thompson was at the helm; that he had been on board of said schooner twenty days before this happened; that the schooner was in good order, tight, did not make a drop of water; that she had sails and rigging such as is necessary for such a vessel, and as good a schooner as he had been on in Mobile bay; that he has been following the sea going on thirteen years; that he never knew Capt. Twiford until he went on his schooner.

Cross-examination.

Deponent was twenty years of age on the fifteenth day of January, 1850; that he has been navigating the waters of the Mobile bay one year previous to the seventh of January, 1850; that he never took any interest in the navigation of Mobile bay; that he was not well acquainted with it; that he does not know whether the schooner was in her proper course to the shipping or not; that the steamer was distant from a mile and one half to two miles when she was first seen; that it was then between four and five o'clock; that the schooner was going a south course at the time; that he cannot say what course the steamer was steering, but she was a little on the larboard bow of the schooner; that it was about three quarters of an hour to one hour from the time that she was first seen to the time of the collision; that he remained on deck, as also did all hands remain on deck all of the time; that when the

steamer was first discovered, the captain told the man at the helm to keep her away; that they continued in that course, which was south by west, until they came near to the steamer; that the steamer did not change her course from the time that she was first seen to the time of the collision; that at the time that the captain gave the order to put the helm hard down, the vessels were about three yards apart; that the helm was put hard down and the foresail jibbed, and that slewed the head of the schooner around to the eastward; that deponent does not know whether the foresail jibbed back again, or not; that the steamer run into the schooner; that from the time that the helm was put hard down, and she turned her head to the eastward, the course of schooner was not changed until after the collision, and until after she sunk and touched the bottom, and that was about fifteen minutes after the collision; that the bow of the schooner struck the steamer; that the bow of steamer did not strike schooner; that the schooner filled with water in about fifteen minutes, and sunk as soon as she filled; that the schooner was loaded in the same manner as lighters are generally loaded, there was twenty-eight bales in the hold and the balance on deck; that she was a water-boat, the tank was out; that after the collision they got a staysail on her and tried to get her in shore, but that she filled so fast that she sunk with her head to the eastward; that after the collision the schooner was heading to the westward, and she was in that direction when the steamer went by her; that she sunk with her stern on the bottom first, and swung round with her head to the eastward, the wind and current running from the north; that she was laying, after she sunk, with her broadside to the wind and current; that she struck on the bottom first, and then she slewed with her head to the eastward, and then turned over; that her keel was on the bottom and the bow was not.

Direct examination resumed.

Direct examination resumed.—That in the distance of three yards, if a vessel was under a good control of her helm, she might be changed three or four points in her course; that at the time of the collision the schooner was heading south by west; that the collision occurred immediately after the jibbing of the sail; that Captain Twiford was sober when he came on board of the vessel and she left the wharf; that all of the crew were sober; that they all had been up all night getting the schooner off from the ground; that there was not any liquor on board of the schooner; that the schooner left the wharf between one and two o'clock.

his
SAMUEL ⋈ AUGUSTUS.
mark.

Subscribed and sworn to before me.

ALEXANDER McKINSTRY,
Com'r.

Testimony of Swift.

And the said Joseph Swift having been by me duly and carefully cautioned, examined, and sworn, did depose and say, and doth depose and say: That he was on board of the steamer Oregon at the time of a collision between the said steamer and a schooner; it was early in the month of September, 1849; it was on Sunday morning; he heard some one on board of the steamer halloo that they were about to run into a schooner; does not know who it was; shortly afterwards the collision took place; that he heard some one on board of the schooner halloo that the schooner was sinking; that it was not exceeding a minute's time, say a half of a minute or a minute, from the time that some one sung out on board of the steamer that they were about to run into a schooner until the collision took place; that deponent was a passenger on board of the steamer at the time; that deponent heard some one halloo out, a few times distinctly after the collision, Help, as deponent understood it, and that the schooner was sinking; that deponent should say that the steamer did not stop either before or after the collision, but kept on her way. Deponent was a deck passenger; he was in the box that covers the boilers; that he ran forward towards the bar; that the bar is near the centre of the boat; that deponent did not see the schooner at any time until the jib-boom of the schooner struck the steamer; that the jib-boom came into the steamer at the second gangway; that the schooner came into the steamer on the starboard-side, raking aft at an angle of from thirty to forty-five degrees; that deponent did not tell the captain or any one else on the steamer of what had occurred, and of the cry; that he does not know whether or not the captain heard of any of the hallooing or cries.

JOSEPH SWIFT.

Subscribed and sworn to before me.

ALEXANDER McKINSTRY, *Com'r.*

Testimony of Tyson.—Objection by plaintiffs.

And the said Anthony Tyson having been by me duly and carefully cautioned, examined, and sworn, did depose and say, and doth depose and say, (after having been sworn on his voir-dire, the said Tyson says, that he was pilot on the said steamboat Oregon at the time of the collision, and was in the wheelhouse navigating the steamer; upon which the plaintiffs' counsel objects to the testimony of said Tyson on the grounds of his interest, he being incompetent by virtue of his position on said steamer;) and the annexed release being exhibited by the witness, the libellants further object to the competency of said witness on the following grounds: that the said release exhibited appears to have been made, and is made, in the presence of the commissioner by Captain Hiern alone, without exhibiting any authority whatever for representing the other parties in interest, while it appears at the same time that James L. Day, John Geddes, Robert Geddes, Abraham Wolf, and Chas. L. Reynolds are jointly interested with him the said Captain Hiern,

as owners in said steamer Oregon. The libellants further object to the competency of said witness, on the grounds that, if interested in any way, he is as much interested to the libellants as to the defendants in this cause, and the libellants refuse to release him, and that the release is insufficient on its face.

Objections overruled.—Exception.

Which said objections the commissioner overruled, to which libellants except, and reserve the question for the decision of the court.

And the said Tyson says, that he was present at the time of the collision between the steamer Oregon and the schooner William Ozman; that it was about two o'clock at night; that it was a hazy moonlight night; that this was about twelve miles below Dog River bar in Mobile bay; that the schooner was about one and one-half miles distant at the time she was first discovered, the Oregon at the same time steering a due north course; as far as deponent could judge the schooner was steering a south course, coming down before the wind; that the steamer was in the usual and proper channel, and steering in the usual and proper course; that if the schooner had continued in the course that she was sailing when first discovered, the collision would not have occurred; the steamer would have passed to the west or left side; that the steamer did not change her course; that the schooner continued in her course until within about one hundred and fifty yards of the steamer, when she suddenly changed her course to the westward, and when the collision occurred she was heading west-northwest or thereabouts; that the schooner ran into the steamer, striking her a little forward of amidships with her bow, the jib-boom of the schooner passing into the middle gangway of the steamer; that after the schooner swung alongside of the steamer, and dropped astern of the steamer, heading the same way with the steamer, that the steamer could not have avoided the collision; that the schooner could be plainly seen, and that the collision happened on account of the change of the course of the steamer; but had the schooner not changed her direction, she would have passed one hundred and fifty yards on the east side of the steamer. When deponent could just distinguish on which side the foresail of the schooner was, it was on the starboard side, and the schooner was on the larboard tack; that when the collision occurred the foresail was on the larboard side.

Cross-examined.

X-examined.—That he was in the pilot-house when the schooner was discovered, and remained there until after the collision; that one Peter was there also, and none else; that Peter was at the wheel at the time the schooner was discovered, and kept the wheel until the collision occurred; that at the time the schooner was first discovered, she was north half east; that the wind was north a little east, and a strong breeze; that as soon as deponent saw that the schooner had changed her course, he tried to change the course of the steamer

by putting the helm to starboard; that the effect of doing so was to turn the steamer a half of a point to the westward; that nothing else was done to avoid the collision on board of the steamer; that neither wheels nor the engine were stopped, but the steamer kept on her course; that the steamer kept her course due north from the time that the schooner was first discovered, until within one hundred and fifty yards of the schooner, when she fell off one point to the westward, and was standing that way when the collision happened; that he heard no cries from the schooner, either before or after the collision; that the steamer did not stop either before or after the collision; that deponent is not an American citizen; he is a by birth; he has been in the United States nineteen years; that the steamer reached the city of Mobile between half-past three and four o'clock in the morning; that at the time that the schooner changed her course, at the distance of one hundred and fifty yards, she was four points to the eastward of the steamer.

ANTHONY TYSON.

Subscribed and sworn to before me.

ALEXANDER McKINSTRY,
Commissioner.

Commissioner's certificate.

And I, the said Alexander McKinstry, commissioner as aforesaid, do hereby certify, that I am not counsel nor attorney for either of the said parties to the said cause, nor am I interested in the event thereof; that R. A. Hiern, Daniel Chandler, Kiah B. Sewall, Lyman Gibbons, were each and all of these at the taking of said depositions, and examined and cross-examined each of the said witnesses. That the said examination was continued from day to day until completed; that each of the said depositions was reduced to writing by me, read over aloud by me to the said witnesses respectively, and subscribed by them, respectively, in my presence; and that I have retained the said commission and testimony in my possession, until I may return it to the United States district court for the southern district of Alabama, at Mobile.

Witness my hand and seal, at Mobile, this the fourth day of May, A. D. 1850.

ALEXANDER McKINSTRY,
U. S. Commissioner.

Published by order of court, December 14th, 185 .

JOHN FITTS, *Clerk.*

And afterwards, to wit, on the sixth day of January, in the year of our Lord one thousand eight hundred and fifty-one, being a day of a term of said court, begun and held in and for said district, at Mobile, on the second Monday of December, A. D. 1850, the following proceedings were had, to wit:

This cause having been submitted to the court, his honor John Gayle, judge, &c., delivered the following opinion and decree, to wit:

Opinion of the court.

ROBERT TURNER AND WILLIAM TWIFORD vs. THE STEAMER OREGON. } Opinion.

In this case a libel is filed to recover damages occasioned by a collision in the Bay of Mobile, between the schooner William Osman and the steamboat Oregon, which the libel alleges was occasioned by the negligence or unskilfulness of the master of the steamboat. She was the property of the libellants, Turner and Twiford, and was loaded with 140 bales of cotton, the property of the libellants; the Roccas, which she was conveying as a lighter from the city of Mobile to the Sardinian ship Maria Theresa, lying about twenty-seven miles below or south of the city, at a place known as the "Lower Fleet." By the collision, the schooner was sunk. Her value, with her tackle, apparel, and furniture, was two thousand dollars. The wreck was afterwards sold at auction for the sum of one hundred and two $\frac{5}{100}$ dollars, and her tackle, &c., for one hundred dollars. The cotton was worth seven thousand two hundred and twenty-four $\frac{75}{100}$ dollars. A portion of the cotton was afterwards picked up in a damaged state, and sold under the direction of the port-wardens. The net proceeds of the sale amounted to the sum of twelve hundred and ninety-five $\frac{1}{100}$ dollars.

The respondents charge in their answer, that the collision and loss were occasioned by the carelessness, mismanagement, and want of skill in the master of the schooner, and by no fault of the Oregon. The Oregon was on her passage from New Orleans to Mobile. The foresail was the only one set or employed on the schooner after she got below the pass, and before the steamer was discovered. The collision happened between two and four o'clock in the morning of the . It was a bright starlight night, the moon also shone, and objects could be seen at a considerable distance. The wind was blowing fresh from the north. The vessels descried each other at the distance of about a mile and a half; they were about on the same meridian proceeding towards each other in opposite directions. The schooner was sailing before or with the wind. The steamer was going at the rate of eight, and the schooner six miles an hour.

Thus far, there is no difference between the parties or conflict in the evidence.

The crew of the schooner, besides the master, was composed the mate, three seamen, and a black boy acting as cook. The master, mate, and one of the seamen, have been examined as witnesses on the part of the libellants. Their evidence is in substance as follows: That when the steamer was discovered, the master of the schooner ordered the man at the helm to steer in a southwest direction, so as to pass the steamer on the west, which order was obeyed, and the schooner continued in that course until she came within about fifty yards of the steamer, and would have passed her about thirty yards to the west, giving the steamer, in the language of the witnesses, a wide berth. At

this moment the steamer suddenly changed her course to the westward across the bows of the schooner. A collision now seemed inevitable, in the opinion of the master of the schooner, and he hallooed loudly to the steamer several times that she would run into the schooner. This was also done by some of the hands. The order was then given to put the helm hard down, with the view to turn the schooner more to the east, and to pass the steamer if possible on her starboard side. About the time the order was given, the sail of the schooner jibbed to the larboard, which turned bow more to the west, when her jib-boom struck the steamer on her starboard side, a little forward of the wheelhouse. The blow carried away the bowsprit and nightheads of the schooner, and split her planks and timbers open to the water's edge. The master again hallooed to the steamer to take him and his crew off, as his vessel was sinking, but no attention was paid to him, and the steamer proceeded on her voyage to the city. In a few minutes the schooner sunk, and the cotton on her deck rolled into the sea.

The witnesses say that the diagram shown them, and exhibited in court, presents the true position of the vessels when the collision took place. From this they were crossing each other diagonally—the schooner in a southwest, and the steamer in a northwest direction. The statement of the schooner's mate, as to her precise direction when the vessel came in contact, is different from that of the master. He says as soon as the helm was put hard down, the foresail jibbed to the larboard side for an instant, and then swung back to the starboard, bringing the head of the schooner towards the eastward from the course she had been steering, and gave her a direction south by east. The mate and master are of opinion that the jibbing was caused by the wind, while one or two mariners, who heard their evidence, expressed the belief that it was occasioned by putting the helm in a position contrary to the direction of the captain—that is, that it was put hard up instead of hard down.

The only witness for the defendants who saw the movements of the vessels and the collision, is Anthony Tyson, the pilot of the Oregon; he states that he was present at the time the collision occurred; that it was about two o'clock in the morning, and about twelve miles below Dog River bar in the bay of Mobile, and that it was a hazy moonlight night; that the schooner was about a mile or a mile and a half distant when she was first discovered—the Oregon was steering a due north course, and, as well as he could judge, the schooner was steering a south course, coming down before the wind; that if the schooner had kept her course, the steamer would have passed her to the west; that the steamer did not change her course, and the schooner continued in her course until she came within one hundred and fifty yards of the steamer, when she suddenly changed her course to the westward, and when the collision occurred she was leading west-northwest, or thereabouts; that the schooner ran into the steamer, striking her a little forward of midships with her bow, the jib-boom of the schooner passing into the middle of the gangway of the steamer; that after the collision, the schooner swung alongside the steamer and drifted astern, heading the same way with the steamer; that the steamer could not have avoided the collision;

that the schooner could plainly be seen, and the collision happened on account of the change of her course; that had she not changed her course, she would have passed one hundred and fifty yards on the east side of the steamer; that when the witness could first distinguish on which side the foresail of the schooner was, it was on the starboard side, and the schooner was on the larboard tack, and when the collision occurred it was on the larboard side.

On cross-examination, the same witness states that when the schooner was first discovered she bore north half east; that as soon as he saw she had changed her course, he tried to change the course of the steamer, and changed her a half point to the westward; that nothing else was done to avoid the collision on part of the steamer; neither the wheels nor the engines were stopped; that he heard no cries from the schooner either before or after the collision; and that at the time the schooner changed her course at the distance of one hundred and fifty yards, she was four points to the eastward.

The master of the steamer did not see the collision. He states that the shock on the Oregon was so light that he did not suppose the schooner had sustained aay damage or injury, and gives this as his reason for not stopping the steamer after the collision. He states, also, (as matter of opinion,) that the schooner must have changed her course and approached the steamer in the direction described by the mate. Other witnesses (judging from the appearance of the breach) are of the same opinion.

Joseph Swift, a passenger on the Oregon, states that he heard some one on the steamer halloo that they were about running into a schooner, and shortly afterwards the collision happened. That he heard some one on the schooner halloo that the schooner was sinking. The witness further states, that the jib-boom of the schooner came into the steamer on the starboard side, raking her off at an angle of from thirty to forty-five degrees. Whether the schooner was sailing in a north-west direction, as stated by the mate of the steamer, when the collision happened, was made a prominent question in the argument of the defendants' counsel. He insisted with force and ingenuity that the breach or wound being in that direction was a circumstance which, of itself, would outweigh the statement of witnesses, and was conclusive.

I am of opinion, that the apparent direction of the breach made by the jib-boom of the schooner is not conclusive to show that it pointed in that direction at the time of the collision. The steamboat with her great power and velocity, using the bowsprit as a lever, suddenly turned the bow of the other vessel in her own direction, and thus the appearance of the breach may give a false impression of the course of the schooner at the moment of the collision. This circumstance, therefore, so earnestly pressed by counsel, is not sufficient to counteract the positive statement of several witnesses. The mate of the steamer *of the steamer* testifies that "after the collision the schooner swung alongside the steamer, and dropt astern, heading the same way with the steamer."

In the main points of the case, to wit, the course of the vessels and the sudden change of that course, there is a contradiction in the testi-

mony that is wholly irreconcilable. On the side of the libellants we have the concurring statements of three witnesses, which are flatly and positively contradicted by the mate of the Oregon, the only witness for the defendants who saw the collision and the movements of the two vessels. In most cases of conflicting evidence the task imposed on the court is difficult and delicate. Here, however, the duty of the court is divested of all delicacy, because that duty is plainly pointed out and enjoined by a very familiar legal rule. That rule is, that a plurality of witnesses shall prevail against one when they are all equally respectable, and all testify to the same facts. The evidence, then, shows the case to be—that on the night of the , the schooner William Ozman was proceeding down the bay of Mobile with one hundred and forty bales of cotton, which she was conveying to the Sardinian ship Maria Theresa, then at anchor about twenty-seven miles below the city. That she was sailing due south, with a fresh wind from the north; that she discovered the steamer Oregon at the distance of a mile and a half, steering due north; that with a view to pass the steamer without accident, she changed her course to west of south, which she kept until the vessels came within a short distance of each other; that the steamer suddenly changed her course to the northwest and across the bow of the schooner, and that *and that* the collision occurred, and the schooner and her cargo were lost in consequence of this sudden and altered movement in the Oregon.

It only remains to state the law, and apply it to this state of facts.

1st. A vessel sailing before the wind or with the wind must get out of the way of a vessel sailing against the wind.

2d. A vessel on the starboard tack, and the vessel on the larboard tack, is bound to give way to each other.

3d. Steamboats are always bound to give way to vessels using sails only, because they receive their impetus from steam, have greater power, are more manageable and capable of being kept under better command. They are to be considered as always sailing with a fair wind. (3 Kent's Com. 230; Story on Bailments, 606, 607; Abbot on Ship, 308.) These rules are the dictate of common sense and common prudence. They have been long established in England and the United States, and it is presumed are familiar to all persons engaged in the navigation of the sea or the coast. The steamboat Oregon has not observed these rules in relation to vessels of her description. The collision was by her fault, and she is liable for the loss of the schooner Wm. Ozman and her cargo. It is therefore ordered that the following decree be entered on the records of this court:

Decree.

ROBERT TURNER AND WILLIAM TWIFORD
vs.
STEAMER OREGON.

This day came the libellants, by their proctors, and also came R. A. Hiern, master and part owner of the said steamer Oregon, who inter-

vened for himself and the other owners of said steamer, by their proctors; and this cause coming on to be heard on the libel, answer, and proofs, was argued by counsel. Upon consideration whereof, it is declared by the court that the libellants have established their claim to damages against the said steamboat Oregon, her tackle, apparel, and furniture, and the claimants who have intervened for their interest therein, in the sum of eighteen hundred and six dollars and seventy cents, with interest thereon from the sixth day of October, eighteen hundred and forty-nine, making, in all, the sum of nineteen hundred and eighty-nine dollars and forty-seven cents. And it is ordered, adjudged, and decreed, that the said steamer Oregon, her tackle, apparel, and furniture, be condemned as forfeited to said libellants, to satisfy said damages and costs; and it appearing to the satisfaction of the court that the said steamer Oregon, her tackle, apparel, and furniture have been restored to R. A. Hiern and James Sands, who have stipulated to have said steamer Oregon, her tackle, apparel, and furniture forthcoming, to abide the decree of this honorable court, and, in default thereof, to pay to said libellants the sum of three thousand six hundred and twelve dollars; and that they have failed to produce said steamer Oregon, her tackle, apparel, and furniture, or to pay said sum of three thousand six hundred and twelve dollars, as they were bound to do: It is therefore considered by the court that the said libellants do have and recover against the said R. A. Hiern and James Sands the said sum of three thousand six hundred and twelve dollars, together with all costs, to be discharged upon the payment of the sum of one thousand eight hundred nine dollars and forty-seven cents, and all costs.

Appeal and orders thereon.

The defendants come into open court, and pray an appeal to the next term of the circuit court for this district, which is allowed upon the defendants entering into bond, with security, in double the amount of the decree, conditioned to prosecute their appeal to effect, and to abide and perform the final decree in the said appellate court, which bond is to be approved by the judge of this court, and to be given within fifteen days from the date of this order. It is further ordered, that execution be suspended till the expiration of the fifteen days herein allowed for the preparation of the appeal bond. It is further ordered, that, in the event the appeal is not perfected within the time herein specified, execution may issue.

Bond.

UNITED STATES OF AMERICA.

District court of the United States for the southern district of Alabama.

Know all men by these presents, that we, Roger A. Hiern, James Sands, James L. Day, Robert Geddes, Abraham Wolff, and Charles L. Reynolds, are held and firmly bound unto Robert Turner and William Twiford, in the just and full sum of thirty-nine hundred and

seventy-eight $\frac{94}{100}$ dollars, lawful money of the United States, for which payment well and truly to be made to the said Robert Turner and William Twiford, their heirs, executors, administrators, and assigns, we and each of us bind ourselves, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this eighteenth day of January, in the year of our Lord one thousand eight hundred and fifty-one.

The condition of the above obligation is such, that whereas, on the sixth day of January, A. D. 1851, it being a day of a term of the district court of the United States, begun and held in and for said district, on the second Monday of December, A. D. 1850, before his honor, John Gayle, judge of said court, a decree was rendered by said court in favor of Robert Turner and William Twiford, libellants, against the steamer Oregon, etc., that the said steamer Oregon, her tackle, apparel, and furniture be forfeit to said libellants, to satisfy the sum of eighteen hundred and six dollars and seventy cents, with interest thereon from the sixth day of October, 1849, making in all the sum of nineteen hundred and eighty-nine dollars and forty-seven cents, for damages, etc.; and also in favor of said libellants against R. A. Hiern and James Sands, stipulators on their writing obligatory to have said steamer forthcoming, etc., for the sum of three thousand six hundred and twelve dollars, to be discharged upon the payment of the sum of one thousand eight hundred and nine dollars, and all costs, as by said decree recorded in said court more fully appears: And whereas, the said R. A. Hiern and James Sands have prayed and obtained an appeal from said decree to the next term of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, which has been allowed on the filing of a bond, etc.: Now, therefore, if the said Roger A. Hiern and James Sands shall and truly prosecute their appeal to effect, and shall also perform and abide by such decree as the said appellate court may pronounce in the premises; then the above obligation to be void, else to be and remain in full force and effect.

R. A. HIERN, [SEAL.]
JAMES SANDS, [SEAL.]
JAMES L. DAY, [SEAL.]
R. GEDDES, [SEAL.]
ABR'M WOLFF, [SEAL.]
CHA'S L. REYNOLDS. [SEAL.]

Witness—GEO. W. MILLER.

Approved this 18th January, 1851.

JOHN GAYLE,
Judge U. S. for Alabama.

Filed 18th January, 1851.

JOHN FITTS, *Clerk.*

I, John Fitts, clerk of the district court of the United States for the southern district of Alabama, do hereby certify, that the foregoing seventy-five pages and twenty-three lines contain a full, true, and per-

fect exemplification of the record and proceedings had in a certain cause lately pending and determined therein; wherein Robert Turner and William Twiford were libellants, and the Steamer Oregon et al. respondents, as the same remain of record and on file in my said office.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and affixed the seal of said district court, this thirteenth day of February, in the year of our Lord one thousand eight hundred and fifty-one.

JOHN FITTS, *Clerk so. dist. Alabama.*

Pleas had before the honorable the circuit court of the United States for the fifth judical circuit and southern district of Alabama, at a term thereof, begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and fifty-one.

Monday morning, April 14th, A. D. 1851.

The court met pursuant to law. Present, his honor John Gayle, judge of said court.

And afterwards, to wit, on the 24th day of April, A. D. 1851, being a day of the said term of the aforesaid circuit court, the following proceedings were had in the cause of

ROBERT TURNER AND WILLIAM TWIFORD
vs.
STEAMER OREGON AND STIPULATORS. } 3232½.

Order.

Ordered by the court that this cause be continued.

And afterwards, to wit, on the 6th day of January, A. D. 1852, being a day of a term of the said circuit court, begun and held in and for the southern district of Alabama, at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty-one, the following order was made in the cause of

TURNER AND TWIFORD
vs.
STEAMER OREGON AND STIPULATORS. } 3232½.

Order.

It is ordered by the court that this cause be continued.

And afterwards, to wit, on the 23d day of April, A. D. 1852, being a day of a term of said circuit court, begun and held on the second Monday of April, A. D. 1852, the following order was made in the cause of

TURNER AND TWIFORD
vs.
STEAMER OREGON AND STIPULATORS. } 3232½.

Order.

It is ordered by the court that this cause be continued.

And afterwards, to wit, on the 12th day of January, A. D. 1853, being a day of a term of said circuit court, begun and held on the fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty-two, the following order was made in the cause of

TURNER AND TWIFORD
vs.
STEAMER OREGON AND STIPULATORS. } 3232½.

Order.

It is ordered by the court that this cause be continued.

And afterwards, to wit, on the 22d day of August, A. D. 1853, it being a day of an adjourned term of said circuit court, begun and held in and for the southern district of Alabama, at Mobile, on the fourth Monday of August, in the year of our Lord one thousand eight hundred and fifty-three, for the disposal of appeal and chancery causes, by order of and before his honor John A. Campbell, presiding judge of said court, the following order was made in the cause of

TURNER AND TWIFORD
vs.
STEAMER OREGON AND STIPULATORS. } 3232½.

Order of transfer to Milledgeville.

In this case the presiding judge having been of counsel for the appellants, and being incompetent to try the same for that reason, and upon the application of all the parties to the cause: That the cause be transferred to the circuit court of the United States to be holden at Milledgeville, in the State of Georgia, and the parties to the cause agree that testimony may be taken upon interrogatories and cross-interrogatories, in the usual manner, upon commissions to be issued by the clerk of this court, and to be returnable herein; and that after the cause is thus prepared, that the record with this order shall be transmitted to the court aforesaid, to be submitted to the said court upon printed or written arguments, which shall be previously shown to the counsel on either side. It is further agreed, that either party may appeal from the decision there rendered, to the Supreme Court of the United States, as in other cases. A bond which shall operate as a supersedeas may be executed, with securities resident in Alabama, within sixty days after the rendition of the decree in the circuit court, and that said parties shall have that time within which to complete said appeal.

And afterwards, to wit, on the 10th day of July, 1854, it being on a day of a special term of said circuit court, begun and held on the second Monday of July, A. D. 1854, by order of the honorable John A. Campbell, judge of the fifth judicial circuit, in pursuance of previous notice—present, the hon. John A. Campbell, and hon. John Gayle—the following order was made in the cause of

TURNER AND TWIFORD
vs.
STEAMER OREGON AND STIPULATORS. } 3232½.

Order of transfer to Savannah.

In this cause, the presiding judge of the court having been of counsel for the appellants, and being incompetent to try the same for that reason, it is ordered, upon the application and with the consent of the parties to the same, that this cause be transferred to the circuit court of the United States to be holden at Savannah, in the State of Georgia. And the parties agree that testimony may be taken upon interrogatories and cross-interrogatories in the usual manner, upon commission to be issued by the clerk of this court, and to be returned herein, and that after the cause is thus prepared, that the record with this order shall be transferred to the court aforesaid, to be submitted to the said court upon printed or written arguments, which shall be previously shown to the counsel on either side. It is further agreed that either party may appeal from the decision thus rendered, to the Supreme Court of the United States, as in other cases, and a bond which shall operate as a supersedeas may be executed, with securities resident in Alabama, within sixty days after the rendition of the decree in the circuit court; and that said parties shall have that time within which to complete said appeal.

And afterwards, to wit, on the 21st day of April, the same being a day of the April term of the circuit court aforesaid, begun and held on the second Monday of April, A. D. 1855, the following proceedings were had in this cause, viz.:

Decree affirming judgment and granting appeal.

ROBERT TURNER AND WILLIAM TWIFORD
vs.
STEAMER OREGON.

The order heretofore made in this cause, transferring the same to the circuit court of the United States at Savannah, is hereby rescinded, and the said cause being submitted to the court, a decree is rendered pro forma—the presiding judge having been of counsel for the defendants—affirming the judgment that was rendered in this cause on the 6th of January, 1851, for eighteen hundred and nine dollars, with costs of suit. From which decree an appeal is prayed, which is hereby granted. By the consent of parties, it is ordered that the evidence taken in one or either of the causes may be used in the other. The decree

rendered in this cause is by consent of the parties; and it is ordered by the court that the appellants execute bond with security for double the amount of the decree, within thirty days from the date hereof, to be approved by the clerk of this court, by consent of the parties.

Be it remembered, that on the 15th day of May, 1855, the appellant filed in the office of the clerk of said court an appeal bond, which was approved, and is in the words and figures following, to wit:

Appeal bond.

UNITED STATES OF AMERICA,
Southern district of Alabama.

Know all men by these presents, that we, Roger A. Heirn, Robert Geddes, Abraham Wolff, and Charles Le Baron, are held and firmly bound unto Robert Turner and William Twiford, in the sum of thirty-six hundred and eighteen dollars, to be paid to the said Robert Turner and William Twiford, their certain attorney or attorneys, executors, administrators, or assigns, for the faithful payment whereof we hereby bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 15th day of May, A. D. 1855.

The condition of the above obligation is such, that whereas the above-named Robert Turner and William Twiford, heretofore, to wit, on the 6th day of January, A. D. 1851, by a decree of the district court of the United States for the southern district of Alabama, at Mobile, recovered judgment against the above bounden Roger A. Heirn, as master and part owner of the steamer Oregon, for the sum of eighteen hundred and nine dollars, besides costs of suit; which said decree and judgment was afterwards, to wit, on the 21st day of April, A. D. 1855, by the circuit court of the United States for the district aforesaid, affirmed, and from which said decree and judgment of the circuit court aforesaid the said Roger A. Heirn hath prayed an appeal to the Supreme Court of the United States, which is granted upon the execution of this bond:

Now, therefore, the condition of this obligation is such, *the condition of this obligation is such*, that if the above bounden Roger A. Heirn shall prosecute his said appeal to effect, or failing therein shall pay all such damages and costs as may be awarded against him by reason of the same, then and in that case the above obligation to be void, otherwise to remain in full force and virtue.

R. A. HEIRN, [SEAL.]
R. GEDDES, [SEAL.]
AB'M WOLFF, [SEAL.]
C. LE BARON. [SEAL.]

Filed the 15th day of May, 1855, and approved.

GEO. E. HOLT, *Clk.*

Clerk's certificate.

I, George E. Holt, clerk of the circuit court of the United States for the southern district of Alabama, do hereby certify, that the foregoing eighty-two pages, numbered from one to eighty-two inclusively, contain a full, true, and perfect exemplification of the record and proceedings had in a certain cause lately pending and determined in said court, wherein Robert Turner and William Twiford are libellants, and Steamer Oregon et al. are defendants, as the same are of record and on file in my office.

[SEAL.] In testimony whereof, I have hereto set my hand and the seal of said court, the 18th day of May, A. D. 1855.

GEO. E. HOLT,
Clerk circt. ct. U. S., so. dist. Ala.